



GUIDELINE 19 - LIABILITY REQUIREMENTS FOR INDUSTRIAL WASTE LANDFILLS

North Dakota Department of Health - Division of Waste Management

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I. Introduction

This guidance document was prepared to assist your facility in meeting the liability requirements of Chapter 33-20-14 of the North Dakota Solid Waste Management Rules.

The purpose of liability financial assurance is to ensure that funds are available so that individuals are compensated for any damage to person or property arising from activities at a particular site. In exchange for being subject to the risks posed by such facilities, individuals are thus assured of compensation in the event that potential harms occur. Therefore, it is important that the mechanisms demonstrating liability coverage are correctly prepared.

The owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least one million dollars per occurrence with an annual aggregate of at least two million dollars, exclusive of legal defense costs.

Should you have any questions regarding the preparation of your financial assurance documents feel free to contact the Division of Waste Management.

II. Reserve Account

Your facility may use a savings account or Certificate of Deposit (CD) or other account where the monies have been set aside to cover the costs for liability. The reserve account must be funded in its entirety. No monthly or year payments into the reserve account are allowed. At the bank you should ask for an "assignment" of a CD or savings account to the Department. The bank will put a hold on the CD or savings account and your facility will not be able to remove funds from these accounts unless you have prior approval from the Department.

III. Trust Fund

After your facility has set up a trust fund in accordance with section 33-20-14-06, a trust agreement **and** certification of acknowledgment must be submitted. A trust agreement must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust agreement, the "agreement," entered into as of [Date] by and between [Name of Owner or Operator] a [Name of state] [Choose one: Corporation, Partnership, Association, or Proprietorship] , the "grantor", and [Name of corporate trustee] , [Insert, "incorporated in the state of (state)" or "a national bank"] , the "trustee".

Whereas, the Department has established certain regulations applicable to the grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the grantor has elected to establish a trust to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the grantor, acting through its duly authorized officers, has selected the trustee to be the trustee under this agreement, and the trustee is willing to act as trustee.

Now, therefore, the grantor and the trustee agree as follows:

Section 1. Definitions. As used in this agreement:

- (a) The term "grantor" means the owner or operator who enters into this agreement and any successors or assigns of the grantor.
- (b) The term "trustee" means the trustee who enters into this agreement and any successor trustee.

Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached *Schedule A*.

Section 3. Establishment of Fund. The grantor and the trustee hereby establish a trust fund, hereinafter the "fund", for the benefit of any and all third parties injured or accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amount of _____ [up to \$1 million] per occurrence and _____ [up to \$2 million] annual aggregate for sudden accidental occurrences, except that the fund is not established for the benefit of third parties for the following:

- (a) Bodily injury or property damage for which [Insert name of grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [Insert name of grantor] would be obligated to pay in the absence of the contract or agreement.
- (b) Any obligation of [Insert name of grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.
- (c) Bodily injury to:
 - (1) An employee of [Insert name of grantor] arising from, and in the course of, employment by [Insert name of grantor]; or
 - (2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [Insert name of grantor].

This exclusion applies:

- (A) Whether [Insert name of grantor] may be liable as an employer or in any other capacity; and
 - (B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).
- (d) Bodily injury or property damage arising out of the ownership, maintenance, use, or

entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

- (1) Any property owned, rented, or abandoned by [Insert name of grantor] ;
- (2) Premises that are sold, given away, or abandoned by [Insert name of grantor] if the property damage arises out of any part of those premises;
- (3) Property loaned to [Insert name of grantor] ;
- (4) Personal property in the care, custody, or control of [Insert name of grantor] ;
- (5) That particular part of real property on which [Insert name of grantor] or any contractors or subcontractors working directly or indirectly on behalf of [Insert name of grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered [Choose one: "primary" or "excess"] coverage.

The fund is established initially as consisting of the property, which is acceptable to the trustee, described in *Schedule B* attached hereto. Such property and any other property subsequently transferred to the trustee is referred to as the fund, together with all earnings and profits thereon, less any payments or distributions made by the trustee pursuant to this agreement. The fund shall be held by the trustee, IN TRUST, as hereinafter provided. The trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the grantor, any payments necessary to discharge any liabilities of the grantor established by the Department.

Section 4. Payment for Bodily Injury or Property Damage. The trustee shall satisfy a third-party liability claim by making payments from the fund only upon receipt of one of the following documents:

- (a) Certification from the grantor and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF VALID CLAIM

The undersigned, as parties [Insert name of grantor] and [Insert name and address of third-party claimant(s)] , hereby certify that the claim of bodily injury and/or property damage caused by a sudden accidental occurrence arising from operating [Insert name of grantor]'s solid waste disposal facility should be paid in the amount of \$.

[Signatures]
Grantor

[Signatures]
Claimant(s)

- (b) A valid final court order establishing a judgment against the grantor for bodily injury or property damage caused by sudden accidental occurrences arising from the operation of the grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the trustee for the fund shall consist of cash or securities acceptable to the trustee.

Section 6. Trustee Management. The trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the grantor may communicate in writing to the trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the fund, the trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstance then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (i) Securities or other obligations of the grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held unless they are securities or other obligations of the federal or a state government;
- (ii) The trustee is authorized to invest the fund in time or demand deposits of the trustee, to the extent insured by an agency of the federal or state government; and
- (iii) The trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the fund to any common commingled, or collective trust fund created by the trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 81a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the trustee. The trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the trustee by the other provisions of this agreement or by law, the trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the trustee in other fiduciary

capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States government, or any agency or instrumentality thereof, with a federal reserve bank, but the books and records of the trustee shall at all times show that all such securities are part of the fund;

- (d) To deposit any cash in the fund in interest-bearing accounts maintained or savings certificates issued by the trustee, in its separate corporate capacity, or in any other banking institution affiliated with the trustee, to the extent insured by an agency of the federal or state government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the fund and all brokerage commissions incurred by the fund shall be paid from the fund. All other expenses incurred by the trustee in connection with the administration of this trust, including fees for legal services rendered to the trustee, the compensation of the trustee to the extent not paid directly by the grantor, and all other proper charges and disbursements of the trustee shall be paid from the fund.

Section 10. Annual Valuations. The trustee shall annually, at least thirty days prior to the anniversary date of establishment of the fund, furnish to the grantor and to the Department a statement confirming the value of the trust. Any securities in the fund shall be valued at market value as of no more than sixty days prior to the anniversary date of establishment of the fund. The failure of the grantor to object in writing to the trustee within ninety days after the statement has been furnished to the grantor and the Department shall constitute a conclusively binding assent by the grantor barring the grantor from asserting any claim or liability against the trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The trustee may from time to time consult with counsel, who may be counsel to the grantor with respect to any question arising as to the construction of this agreement or any action to be taken hereunder. The trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the grantor.

Section 13. Successor Trustee. The trustee may resign or the grantor may replace the trustee, but such resignation or replacement shall not be effective until the grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the trustee hereunder. Upon the successor trustee's acceptance of the appointment, the trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the fund. If for any reason the grantor cannot or does not act in the event of the resignation of the trustee, the trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the grantor, the Department, and the present trustee by certified mail ten days before such change becomes effective. Any expenses incurred by the trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the grantor to the trustee shall be in writing, signed by such persons as are designated in the attached *Exhibit A* or such

other designees as the grantor may designate by amendments to *Exhibit A*. The trustee shall be fully protected in acting without inquiry in accordance with the grantor's orders, requests, and instructions. All orders, requests, and instructions by the Department to the trustee shall be in writing, signed by the Department, or its designees, and the trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the grantor or Department hereunder has occurred. The trustee shall have no duty to act in the absence of such orders, requests, and instructions from the grantor and/or the Department, except as provided for herein.

Section 15. Notice of Nonpayment. If a payment for bodily injury or property damage is made under Section 4 of this trust, the trustee shall notify the grantor of such payment and the amount(s) thereof within five working days. The grantor shall, on or before the anniversary date of the establishment of the fund following such notice, either make payments to the trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the trustee that other financial assurance for liability coverage has been obtained equaling the amount necessary to return the trust to its value prior to the payment of claims. If the grantor does not either make payments to the trustee or provide the trustee with such proof, the trustee shall within ten working days after the anniversary date of the establishment of the fund provide a written notice of nonpayment to the Department.

Section 16. Amendment of Agreement. This agreement may be amended by an instrument in writing executed by the grantor, the trustee, and the appropriate Department administrator if the grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this agreement as provided in Section 16, this trust shall be irrevocable and shall continue until terminated at the written agreement of the grantor, the trustee, and the Department, or by the trustee, and the Department, if the grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the grantor.

The Department will agree to termination of the trust when the owner or operator substitutes alternate financial assurance as specified in this section.

Section 18. Immunity and Indemnification. The trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this trust, or in carrying out any directions by the grantor or the Department issued in accordance with this agreement. The trustee shall be indemnified and saved harmless by the grantor or from the trust fund, or both, from and against any personal liability to which the trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the grantor fails to provide such defense.

Section 19. Choice of Law. This agreement shall be administered, construed, and enforced according to the laws of the state of [Name of state] .

Section 20. Interpretation. As used in this agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this agreement shall not affect the interpretation or the legal efficacy of this agreement.

In Witness Whereof the parties have caused this agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as to the date first above written.

The parties below certify that the wording of this agreement meets the requirements set forth in subsection 1 of section 33-20-14-07 as such regulations were constituted on the date first above written.

[Signature of grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of trustee]

Attest:

[Title]

[Seal]

Instructions: *The wording of the certification of acknowledgment which must accompany the trust agreement for a trust fund must be as follows:*

CERTIFICATION OF ACKNOWLEDGMENT

State of _____

County of _____

On this [Date] , before me personally came [Name of Owner or Operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [Address, City, State, Zip] , that she/he is [Title of Owner or Operator] of [Name of corporation] , the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of notary public]

EXHIBIT A

The following persons, acting singly or collectively, shall have the right to issue instructions to the Trustee pursuant to Section 14 of the Agreement:

Name

Position

SCHEDULE A

On Schedule A, for each facility list the name, address, and permit number, for which liability assurance is demonstrated by this agreement.

Name and address of Facility:

Name: _____

Address: _____

City, State, Zip: _____

Business Contact person: _____

Contact phone: _____

Permit number: _____

Amount of liability coverage: \$ _____

SCHEDULE B

On Schedule B, list the amount the trust is funded. If the trust is a standby trust, list the amount the trust would have in it, if it were funded. Select from **one** of the options below according to the type of assurance used. If none of the options pertain, contact the Department.

Option 1

SCHEDULE B-Fully Funded

This trust fund is funded on [Date] in the amount of [Dollar amount spelled out] U.S. dollars (\$).

Option 2

SCHEDULE B-Surety Bond

The corpus of this trust is now empty and when funded the amount will be [Dollar amount spelled out] U.S. dollars (\$ _____) from [Name of surety bond company]. The surety bond number is _____.

Option 3

SCHEDULE B-Letter of Credit

The corpus of this trust is now empty and when funded the amount will be [Dollar amount spelled out] U.S. dollars (\$ _____) from [Name of financial institution]. The letter of credit number is _____.

IV. Surety Bond

If you are using a surety bond, it must be worded as follows: except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PAYMENT BOND

Surety Bond No.: _____

Parties [Insert name and address of owner or operator], Principal, incorporated in [Insert state of incorporation] of [Insert city and state of principal place of business] and [Insert name and address of surety company(ies)], Surety Company(ies), of [Insert surety(ies) place of business].

Permit number, name, and address or each facility guaranteed by this bond:

| | |
|--------------------------|-------------------------------|
| | Sudden Accidental Occurrences |
| Penal Sum Per Occurrence | \$ <u>[insert amount]</u> |
| Annual Aggregate | \$ <u>[insert amount]</u> |

Purpose: This is an agreement between the surety(ies) and the principal under which the surety(ies), its(their) successors and assignees, agree to be responsible for the payment of claims against the principal for bodily injury and/or property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions:

- (1) Rules and regulations of the governing state agency section 33-20-14-06.

Conditions:

- (1) The principal is subject to the applicable governing provisions that require the principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. Such obligation does not apply to any of the following:
 - (a) Bodily injury or property damage for which [Insert Principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [Insert Principal] would be obligated to pay in the absence of the contract or agreement.
 - (b) Any obligation of [Insert Principal] under a workers' compensation, disability benefits, or unemployment compensation law or similar law.
 - (c) Bodily injury to:
 - (1) An employee of [Insert Principal] arising from, and in the course of, employment by [Insert Principal]; or
 - (2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [Insert Principal]. This exclusion applies:
 - (A) Whether [Insert Principal] may be liable as an employer or in any other capacity; and
 - (B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).
 - (d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.
 - (e) Property damage to:
 - (1) Any property owned, rented, or occupied by [Insert Principal];
 - (2) Premises that are sold, given away, or abandoned by [Insert Principal] if the property damage arises out of any part of those premises;
 - (3) Property loaned to [Insert Principal] ;
 - (4) Personal property in the care, custody or control of [Insert Principal];
 - (5) That particular part of real property on which [Insert Principal] or any contractors or subcontractors working directly or indirectly on behalf of [Insert Principal] are performing operations, if the property damage arises out of these operations.
- (2) This bond assures that the principal will satisfy valid third-party liability claims, as described

in condition 1.

- (3) If the principal fails to satisfy a valid third-party liability claim, as described above, the surety(ies) becomes liable on this bond obligation.
- (4) The surety(ies) shall satisfy a third-party liability claim only upon the receipt of one of the following documents:
 - (a) Certification from the principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF VALID CLAIM

The undersigned, as parties [Insert name of Principal] and [Insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a sudden accidental occurrence arising from operating [principal's] solid waste disposal facility should be paid in the amount of \$_____.

[Signature]

Principal

[Notary] Date

[Signature(s)]

Claimant(s)

[Notary] Date

or (b) A valid final court order establishing a judgment against the principal for bodily injury or property damage caused by sudden accidental occurrences arising from the operation of the principal's facility or group of facilities.

- (5) In the event of combination of this bond with another mechanism for liability coverage, this bond will be considered [Choose one: "primary" or "excess"] coverage.
- (6) The liability of the surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the surety(ies) furnish(es) notice to the Department forthwith of all claims filed and payments made by the surety(ies) under this bond.
- (7) The surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the principal and the Department provided, however, the cancellation shall not occur during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by the principal and the Department, as evidenced by the return receipt.
- (8) The principal may terminate this bond by sending written notice to the surety(ies) and to the Department.
- (9) The surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes,

rules, and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

- (10) This bond is effective from [Insert date] (12:01 a.m., standard time, at the address of the principal as stated herein) and shall continue in force until terminated as described above.

In Witness Whereof, the principal and surety(ies) have executed this bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the principal and surety(ies) and that the wording of this surety bond meets the requirements specified in subsection 2 of section 33-20-14-07, as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

CORPORATE SURETY(IES)

[Name and address]
State of incorporation: _____
Liability limit: \$ _____
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for surety above.]

Bond premium: \$ _____

V. Letter of Credit

If you used a letter of credit, as specified in subsection 3 of section 33-20-14-07, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

COVER LETTER

Date

(Address to the North Dakota Department of Health)

Pursuant to the requirements of the letter of credit financial assurance mechanism, the following information is provided:

Owner or Operator of Solid Waste Facility:

Name: _____
Address: _____
City, State, Zip: _____
Telephone Number: _____

Solid Waste Facility

Name: _____
Address: _____
City, State, Zip: _____
Permit Number: _____

Letter of Credit

Letter of Credit Number: _____
Issuing Institution: _____
Date of Letter of Credit: _____
Amount assured by the letter of credit: \$_____

[Signature of Owner or Operator]

[Title]

[Name and Title (Typed)]

IRREVOCABLE STANDBY LETTER OF CREDIT

[Insert Name and Address of Issuing Institution]

North Dakota Department of Health

We hereby establish our Irrevocable Standby Letter of Credit No. ____ in the favor of [Choose one: "any and all third-party liability claimants" or Insert name of trustee of the standby trust fund], at the request and for the account of [Insert Owner or Operator's name and address] for third-party liability awards or settlements up to [Dollar amount written out] United States dollars \$____ per occurrence and the annual aggregate amount of [Dollar amount written out] United States dollars \$____, for sudden accidental occurrences available upon presentation of a sight draft bearing reference to this letter of credit No. _____, and

(1) a signed certificate reading as follows:

CERTIFICATE OF VALID CLAIM

The undersigned, as parties [Insert name of Principal] and [Insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a sudden accidental occurrence arising from operations of [Principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of \$____. We hereby certify that the claim does not apply to any of the following:

- (a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [Insert name of Principal] would be obligated to pay in the absence of the contract or agreement.
- (b) Any obligation of [Insert name of Principal] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.
- (c) Bodily injury to:

- (1) An employee of [Insert name of Principal] arising from, and in the course of, employment by [Insert name of Principal]; or
- (2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [Insert name of Principal].

This exclusion applies:

- (A) Whether [Insert name of Principal] may be liable as an employer or in any other capacity; and
 - (B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).
- (d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.
 - (e) Property damage to:
 - (1) Any property owned, rented, or occupied by [Insert name of Principal];
 - (2) Premises that are sold, given away, or abandoned by [Insert name of Principal] if the property damage arises out of any part of those premises;
 - (3) Property loaned to [Insert name of Principal];
 - (4) Personal property in the care, custody, or control of [Insert name of Principal];
 - (5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [Insert name of Principal] are performing operations, if the property damage arises out of these operations.

[Signatures] _____.

GRANTOR _____.

[Signatures] _____.

Claimant(s) _____.

OR

- (2) a valid final court order establishing a judgment against the GRANTOR for bodily injury or property damage caused by sudden accidental occurrences arising from the operation of the GRANTOR'S facility or group of facilities.

This letter of credit is effective as of [Insert date] and shall expire on [Insert date at least one year later], but such expiration date shall be automatically extended for a period of [Insert date at least one year later] on [date] and on each successive expiration date, unless, at least one hundred twenty days before the current expiration date, we notify you, the DEPARTMENT, and [Insert owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

When this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered [Choose one: "primary" or "excess"] coverage.

We certify that the wording of this letter of credit meets the requirements specified in subsection 3 of section 33-20-14-07 as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date].

This credit is subject to [Choose one: "the most recent edition of the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce" or "the Uniform Commercial Code"].

VI. Insurance

Each insurance policy must be amended by attachment of the solid waste liability endorsement or evidenced by a certification of liability insurance.

a. If you use a certificate of liability insurance it must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

SOLID WASTE FACILITY CERTIFICATE OF LIABILITY INSURANCE

1. [Insert name of insurer], (the "insurer") of [Insert address of insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [Insert name of insured], (the "insured"), of [Insert address of insured] in connection with the insured's obligation to demonstrate financial responsibility under North Dakota Administrative Code section 33-20-14-06. The coverage applies at [Insert permit number, name, and address for each facility] for sudden accidental occurrences. The limits of liability are [Insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the insurer's liability], exclusive of legal defense costs. The coverage is provided under policy number _____, issued on [Insert date] the effective date of said policy is [Insert date].
2. The insurer further certifies the following with respect to the insurance described in paragraph 1:
 - (a) Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy.
 - (b) The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer.
 - (c) When requested by the North Dakota Department of Health (Department), the insurer agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.
 - (d) Cancellation of the insurance, whether by the insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the solid waste management facility, will be effective only upon written notice, and only after the expiration of sixty days after a copy of such written notice is received by the Department.
 - (e) Any other termination of the insurance will be effective only upon written notice, and only after the expiration of thirty days after a copy of such written notice is received by the Department, as evidenced by the return receipt.

I hereby certify that the wording of this instrument meets the requirements specified in subsection 4 of North Dakota Administrative Code section 33-20-14-07, as such regulation was constituted on the date first above written, and that the insurer is licensed to transact the business of insurance, in the state of North Dakota or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

[Signature of authorized representative of insurer]
[Type name]
[Title], authorized representative of [name of insurer]
[Address of representative]

b. A solid waste facility liability endorsement must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

SOLID WASTE FACILITY LIABILITY ENDORSEMENT

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under North Dakota Administrative Code section 33-20-14-07. The coverage applies at [Insert permit number, name, and address for each facility] for sudden accidental occurrences. The limits of liability are [Insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the insurer's liability] exclusive of legal defense costs.
2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this paragraph 2 are hereby amended to conform with subsections (a) through (e):
 - (a) Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy to which this endorsement is attached.
 - (b) The insurer is liable for the payment of amounts within any deductible applicable to this policy with a right of reimbursement by the insured for any such payment made by the insurer.
 - (c) When requested by the North Dakota Department of Health (Department), the insurer agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.
 - (d) Cancellation of this endorsement, whether by the insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the solid waste management facility will be effective only upon written notice and only after the expiration of sixty days after a copy of such written notice is received by the Department.
 - (e) Any other termination of this endorsement will be effective only upon written notice, and only after the expiration of thirty days after a copy of such written notice is received by the Department, as evidenced by the return receipt.

Attached to and forming part of policy number ____ issued by [Insert name of insurer] herein called the insurer of [Insert address of insurer] to [Insert name of insured] of [Insert address of insured] this ____ day of [Insert month], 20___. The effective date of said policy is ____ day of [Insert month], 20___.

I hereby certify that the wording of this endorsement meets the requirements specified in section 33-20-14-06, as such rule was constituted on the date first above written, and that the insurer is licensed to transact the business of insurance in the state of North Dakota or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

[Signature of authorized representative of insurer]
[Type name]
[Title], authorized representative of [name of insurer]
[Address of representative]

VII. Financial Test and Corporate Guarantee

a. **Financial Test.** To demonstrate the financial test you should use a letter from the chief financial officer. It should be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. Don't forget to send in the Accountant's Opinion on your firm's financial statement and the Special Report from the Independent CPA with the Letter from Chief Financial Officer.

If your company/corporation does not have a Chief Financial Officer then the highest official dealing with financial operations should sign the letter and his/her title should be inserted into the letter in place of "Chief Financial Officer".

LETTER FROM CHIEF FINANCIAL OFFICER

[Address to North Dakota Department of Health].

I am the chief financial officer of [Insert name and address of firm] . This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage as specified in section 33-20-14-06.

Instructions: *Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its permit number, name, and address.*

The firm identified above is the owner or operator of the following facilities for which liability coverage for sudden accidental occurrences is being demonstrated through the financial test specified in section 33-20-14-06:

Name: _____
Address: _____
City, State, Zip: _____
Permit No.: _____

The firm identified above guarantees, through the guarantee specified in section 33-20-14-06, liability coverage for sudden accidental occurrences at the following facilities owned or operated by the following:

Name: _____
Address: _____
City, State, Zip: _____
Permit No.: _____

The firm identified above is [Insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee; or (3) engaged in the following substantial business relationship with the owner or operator, and receiving the following value in consideration of this guarantee] . *[Attach a written description of the business relationship or a copy*

of the contract establishing such relationship to this letter].

This firm [Choose one: "is required" or "is not required"] to file a form 10K with the securities and exchange commission for the latest fiscal year.

The fiscal year of this firm ends on [Insert month, day] . The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [Insert date] .

Instructions: Choose only one of the following alternatives.

Alternative I

- | | | | |
|------|---|-------|-------|
| 1. | Amount of annual aggregate liability coverage to be demonstrated | \$ | _____ |
| *2. | Current assets | \$ | _____ |
| *3. | Current liabilities | \$ | _____ |
| 4. | Net working capital (line 2 minus line 3) | \$ | _____ |
| *5. | Tangible net worth | \$ | _____ |
| *6. | If less than 90% of assets are located in the United States, give total United States assets | \$ | _____ |
| | | YES | NO |
| 7. | Is line 5 at least \$2 million? | _____ | _____ |
| 8. | Is line 4 at least 4 times line 1? | _____ | _____ |
| 9. | Is line 5 at least 4 times line 1? | _____ | _____ |
| *10. | Are at least 90% of assets located in the United States? If not, complete line 11 | _____ | _____ |
| 11. | Is line 6 at least 4 times line 1? | _____ | _____ |

I hereby certify that the wording of this letter meets the requirements specified in subsection 5 of section 33-20-14-07 as such regulations were constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

Alternative II

- | | | | |
|----|---|----|-------|
| 1. | Amount of annual aggregate liability coverage to be demonstrated | \$ | _____ |
| 2. | Current bond rating of most recent issuance and name of rating service | \$ | _____ |

3. Date of issuance of bond _____
 4. Date of maturity of bond _____
 - *5. Tangible net worth \$ _____
 - *6. Total assets in United States (required only if less than 90% of
assets are located in the United States) \$ _____
- | | | |
|---|-------|-------|
| | YES | NO |
| 7. Is line 5 at least \$2 million? | _____ | _____ |
| 8. Is line 5 at least 4 times line 1? | _____ | _____ |
| 9. Are at least 90% of assets located in the United States? If not, complete line 10 | _____ | _____ |
| 10. Is line 6 at least 4 times line 1? | _____ | _____ |

I hereby certify that the wording of this letter meets the requirements specified in subsection 5 of section 33-20-14-07 as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

b. **Corporate Guarantee.** If you are using a guarantee, as specified in subsection 5 of section 33-20-14-07, it must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. You will also need to submit the Letter from Chief Financial Officer to prove that you meet the requirements of Section 33-20-14-07.5 a through e NDAC.

GUARANTEE FOR LIABILITY COVERAGE

Guarantee made this [Insert date] by [Insert name of guaranteeing entity] , a business corporation organized under the laws of [If incorporated within the United States insert the name of state; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the state of the principal place of business] , herein referred to as guarantor. This guarantee is made on behalf of [Insert name of owner or operator] of [Insert business address] , which is [Insert one of the following: "our subsidiary"; "a subsidiary of [name and address of common parent corporation], or which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship"] , to any and all third parties who have sustained or may sustain bodily injury or property damage caused by sudden accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in subsection 5 of section 33-20-14-07.
2. [Insert name of Owner or operator] owns or operates the following solid waste management

facility(ies) covered by this guarantee:

Name: _____

Address: _____

City, State, Zip: _____

Permit No.: _____

This corporate guarantee satisfies Resource Conservation and Recovery Act third-party liability requirements for sudden accidental occurrences in above-named owner or operator facilities for coverage in the amount of [Insert dollar amount] for each occurrence and [Insert dollar amount] annual aggregate.

3. For value received from [Insert name of owner or operator] , guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by sudden accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [Insert name of owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by sudden accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage identified above.

4. Such obligation does not apply to any of the following:

- (a) Bodily injury or property damage for which [Insert name of owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [Insert owner or operator] would be obligated to pay in the absence of the contract or agreement.
- (b) Any obligation of [Insert name of owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.
- (c) Bodily injury to:
 - (1) An employee of [Insert name of owner or operator] arising from, and in the course of, employment by [Insert name of owner or operator] ; or
 - (2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [Insert name of owner or operator] . This exclusion applies:
 - (A) Whether [Insert name of owner or operator] may be liable as an employer or in any other capacity; and
 - (B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).
- (d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

- (1) Any property owned, rented, or occupied by [Insert name of owner or operator] ;
- (2) Premises that are sold, given away, or abandoned by [Insert name of owner or operator] if the property damage arises out of any part of those premises;
- (3) Property loaned to [Insert name of owner or operator] ;
- (4) Personal property in the care, custody, or control of [Insert name of owner or operator] ;
- (5) That particular part of real property on which [Insert name of owner or operator] or any contractors or subcontractors working directly or indirectly on behalf of [Insert name of owner or operator] are performing operations, if the property damage arises out of these operations.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within ninety days, by certified mail, notice to the Department and to [Insert name of owner or operator] that he intends to provide alternate liability coverage complying with section 33-20-14-06, as applicable, in the name of [Insert name of owner or operator] . Within one hundred twenty days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [Insert name of owner or operator] has done so.

6. The guarantor agrees to notify the Department by certified mail of a voluntary or involuntary proceeding under title 11 (Bankruptcy), United States Code, naming guarantor as debtor, within ten days after commencement of the proceeding.

7. Guarantor agrees that within thirty days after being notified by a Department of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in section 33-20-14-06 in the name of [Insert name of owner or operator] , unless [Insert name of owner or operator] has done so.

8. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by section 33-20-14-06, provided that such modification shall become effective only if the Department does not disapprove the modification within thirty days of receipt of notification of the modification.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of section 33-20-14-06 for the above-listed facility(ies), except as provided in paragraph 10 of this agreement.

10. **Instructions:** *Insert the following paragraph if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator otherwise ignore it.*

Guarantor may terminate this guarantee by sending notice by certified mail to the Department and to [Insert name of owner or operator] , provided that this guarantee may not be terminated unless and until

[Insert name of owner or operator] obtains, and the Department approve(s), alternate liability coverage complying with section 33-20-14-06.

Instructions: *Insert the following paragraph if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator, otherwise ignore it.*

Guarantor may terminate this guarantee one hundred twenty days following receipt of notification, through certified mail, by the Department and by [Insert name of owner or operator].

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.
12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.
13. The guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:
 - (a) Certification from the principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF VALID CLAIM

The undersigned, as parties [Insert name of Principal] and [Insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a sudden accidental occurrence arising from operating [Principal's solid waste disposal facility should be paid in the amount of \$ _____].

[Signatures]

Principal

(Notary) Date

[Signatures]

Claimant(s)

(Notary) Date

- (b) A valid final court order establishing a judgment against the principal for bodily injury or property damage caused by sudden accidental occurrences arising from the operation of the principal's facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [Choose one: "primary" or "excess"] coverage.

I hereby certify that the wording of the guarantee meets the requirements specified in subsection 5 of section 33-20-14-07 as such regulations were constituted on the date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness of notary: